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ENVIRONMENTAL PROGRAM
SUPERFUND

August 3, 1989

BY OVERNIGHT DELIVERY

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United States Department
of Justice
Environmental Enforcement
Section
Lands and Natural Resources
Division
10th St. and Pennsylvania
Avenue, N.W.
Washington, D.C. 20530

Re: Fields Brook Superfund Site
Ashtabula, Ohio

Dear Counsellors:

On July 21, 1989, the undersigned companies, RMI Company, Gulf + Western Inc., Detrex Corporation, Centerior Energy Corporation, and Occidental Chemical Corporation (successor to Hooker Electrochemical Corporation and Diamond Shamrock Chemical Company) (hereafter "the Settling Companies") collectively responded to the United States Environmental Protection Agency's ("U.S. EPA") letter dated June 20, 1989 demanding payment of \$969,282.49, allegedly for response costs incurred by U.S. EPA in connection with the Fields Brook Site.

Our letter of July 21, 1989 stressed, as had the direct discussions with the federal government which preceded the letter, the sound policy objective of encouraging greater participation in settlement, while preserving the federal government's right to seek full recovery of its past response costs. The Settling Companies' letter included as attachments two draft tolling arrangements to achieve that objective, including one patterned after the tolling agreement offered by the United States Department of Justice ("U.S. DOJ") to settlers at the Yellow Water Road Superfund Site in Baldwin, Florida.

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As you know, one concept which the Settling Companies have suggested, for use singly or in combination with other concepts, is a focused demand which seeks recovery of past costs from non-settlers, while preserving the federal government's option of later seeking reimbursement from settlers. The purpose of this letter is to transmit for your review and consideration a demand letter implementing that objective which U.S. EPA recently issued only to non-settlers at the Scientific Chemical Processing Site in Newark, New Jersey.

As at the Fields Brook Site, a group of potentially responsible parties ("PRPs") at the Scientific Chemical Processing Site has stepped forward and incurred response costs as part of a privately-financed response action, while another group of PRPs has ignored U.S. EPA's administrative orders and thereby avoided the incurrence of substantial response costs. As a consequence, on July 11, 1989, U.S. EPA issued the attached demand letter, seeking reimbursement of \$202,400 in past costs, only to the members of the non-settling group of PRPs.

Thus, the Scientific Chemical Processing demand letter indicates that U.S. EPA has, in an analogous situation, sought reimbursement for past costs from non-settlers only. A consistent approach is warranted at Fields Brook.

As the federal government is aware, the Settling Companies are well underway in the performance of \$5.5 million to \$7.0 million of RD and RI/FS work required by U.S. EPA's unilateral administrative order of March 22, 1989 ("the § 106 Order"). Furthermore, the Settling Companies have incurred approximately \$1,000,000 in past costs to keep the settlement process alive, including costs for negotiations and factual investigation. Because the Settling Companies have incurred -- and continue to incur -- these substantial costs in pursuit of settlement, while non-settling PRPs enjoy a "free ride," U.S. EPA should seek recovery of its past costs first from those Field Brook PRPs who stand in knowing violation of the § 106 Order. U.S. EPA has taken this approach at the Scientific Chemicals Processing Site and should do so at Fields Brook. As outlined in our letter of July 21, there are several different ways in which the federal government could address past costs in a manner which would begin to reverse the economic benefit which non-settlers have enjoyed at Fields Brook.

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The Settling Companies are submitting this letter and its attachment as a supplement to their letter of July 21, 1989. We look forward to further discussions with you concerning the concepts addressed herein, and other resolutions of the matter of past costs.

Sincerely,

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cc: Mr. John Kelley ✓
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